SUPREME COURT, U. S.

NOV 30 1974

MICHAEL RODAK, JR., CLERK

74-685

Supreme Court of the United States

October Term, 1974
No. A-312

WALTER C. ROBSON, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

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SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1974
WALTER C. ROBSON, Petitioner
v.
UNITED STATES OF AMERICA, Respondent
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioner, Walter C. Robson, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit affirming Petitioner's conviction on one count of income tax evasion as to the year 1966 under Section 7201 of Title 26, United States Code, on September 3, 1974. Petition for Rehearing and Suggestion of Hearing in Banc was denied October 1, 1974.

OPINION BELOW

The Opinion and the Order of that Court Denying Petition for Rehearing of the United States Court of Appeals appears in Appendix I hereto.

JURISDICTION

The Opinion affirming judgment was entered on September 3, 1974, and denial of Petition for Rehearing and Suggestion of Hearing in Banc was entered on October 1, 1974. Issuance of Mandate was stayed until October 31, 1974, on October 14, 1974.

Pursuant to petitioner's application for an extension of time within which to file a petition for a writ of certiorari, on October 22, 1974, this Court, by the Honorable W. O. Douglas, Associate Justice of the Supreme Court of the United States, made its order extending time to file petition for writ of certiorari to and including November 30, 1974.

Jurisdiction of this Court is invoked under Sec. 1254 of Title 28, U.S. Code.

QUESTIONS PRESENTED

1. Petitioner was charged with income tax evasion (26 USC Section 7201) for each of the years 1965, 1966 and 1967. Trial was had before the Honorable Warren J. Ferguson, United States District Court Judge for the Central District of California. Petitioner was convicted for the year 1966 and acquitted as to the years 1965 and 1967.

The net worth method of proof of unreported

income was used. No specific items of unreported income were shown. "Leads" consisting of the statements and names of three third party witnesses, as to the possession and source of a sizable cash hoard prior to the years in question were furnished to the investigators under the doctrine of **Holland v. United States**, 348 U.S. 121 (1954). Investigation of these principal "leads" was withdrawn from the agents and these witnesses were interrogated by the Grand Jury immediately prior to indictment. Grand Jury transcripts were denied to the Petitioner, so he was unable to show during the government's case-in-chief that the specific leads from these witnesses had not been rebutted, since they were not called by the prosecution.

Petitioner believes that the questions presented by the above fact are:

1. May the trier of the fact presumptively equate income with proof of increase in a taxpayer's net worth under the principles laid down in **Holland v. United States** 348 U.S 121 (1954) in the light of this Court's decision in **Leary v. United States** 395 U.S. 6 (1969) in which it was held that a presumption is arbitrary and violative of due process "unless it can at least be said with

substantial assurance that the presumed fact is more likely than not to flow from the proved fact upon which it is made to depend" **Idem**. 395 U.S. 6, 36?

2. Was the Petitioner deprived of his constitutional guarantees to the presumption of innocence, fair trial, and assistance of counsel by the failure of the government to call in its case-in-chief the three witnesses whose names and written statements were furnished by the Petitioner to the investigators as "leads" under **Holland v. United States** 348 U.S. 121 (1954) which action would have granted the defendant the right to cross-examine them with the correlative right of gaining full access to their Grand Jury testimony and which effectively shifted the burden of proof to Petitioner as to unreported income, so that the Petitioner could not establish failure of the government to rebut these leads and was forced to take the stand in his own defense, which action led to Petitioner's conviction?

3. Is the Petitioner denied due process under the rationale of **Wardius v. Oregon**, 412 U.S. 470 (1973), where the Petitioner turns over evidentiary leads before trial under the **Holland** doctrine and thereafter is denied reciprocal discovery of the

grand jury testimony of these witnesses?

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

Fifth Amendment to the Constitution of the United States.

Sixth Amendment to the Constitution of the United States.

Title 26 USC § 7201.

Rule 29, Federal Rules of Criminal Procedure.

(All set forth in Appendix II)

STATEMENT AND REASONS FOR GRANTING THE WRIT

The defendant was charged with violations in three counts of Title 21, Section 7201--wilful evasion of income tax for the years 1965, 1966 and 1967.

The government's prosecution as to each of the three counts proceeded by way of the net worth theory of proof. That theory in simple terms was pursued as follows:

(a) For each of the three taxable years, the government attempted to show that the defendant's net worth had substantially increased;

(b) Each of the aforesaid increases were attributable to taxable income;

(c) The increases in the defendant's net worth for each of the three taxable years in question were not reported in the defendant's income tax returns and such failures to report constituted wilful acts of tax evasion.

The prosecution's probative jump from proof of (a) increase in net worth to proof of both (b) attribution of such increase to taxable income and (c) wilfulness in the failure to report such increase is a presumptive one. All, then, that the

prosecution must prove as to **each** count is an increase in the taxpayer's net worth and the required proof of income and wilful failure to report such income will necessarily follow. It is this double-barreled presumption from proof of an increase in net worth that the defendant contends, in the context of the facts of this case, deprived him of his several constitutional guarantees.

There can be no question but that due process protects an accused in a criminal prosecution against conviction "except upon proof beyond a reasonable doubt of **every fact** necessary to constitute the crime with which he is charged." **In re Winship**, 397 U.S. 358, (1970) (emphasis added). With regard to the charges against petitioner Robson that protection required, at the least, proof that for each of the years in question there existed **income** that the taxpayer failed to report. One need go no further than the statute itself that Robson was alleged to have violated to ascertain that proof of unreported income is an essential element of the offense. 26 U.S.C., § 7201; **Sansone v. United States**, 380 U.S. 343, 351 (1965). The government would rely on this court's ruling in **Holland v. United States**, 348 U.S. 121 (1954) for the support necessary to conclude that it met its burden in the

instant case.

The **Holland** case in general terms, with specific restrictions which will be discussed later, allows the trier of fact in a net worth tax evasion prosecution to presumptively make a finding of income in certain instances where proof of increase in the taxpayer's net worth is proved.

More significant, however, than the support which the government attempts to find in **Holland** is the establishment of the Supreme Court of the guidelines, since **Holland**, in allowing the government's use of presumptions to establish essential elements of a crime. In the case of **Barns v. United States**, 412 U.S. 837 (197), the Court warned that "common law inferences, like their statutory counterparts, must satisfy due process standards in the light of present day experience." As early as 1943, the Supreme Court had declared unconstitutional a presumption of proof that a firearm had been shipped, transported or received by the defendant from the proof of possession by the defendant--felon of the same firearm. **Tot v. United States**, 319 U.S. 463 (1943). The Court held that " . . . a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the fact presumed, if the

inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience." 219 U.S. at 467. Then in **Leary v. United States**, 395 U.S. 6 (1969) this Court held that a presumption must be struck down as "irrational," and therefore arbitrary and violative of due process "unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." 395 U.S. at 36.

To sustain the presumption in this case in the face of such a caveat would require a statement, made with substantial assurance, that it is more likely than not that an increase in a taxpayer's net worth is attributable to taxable income and that failure to report such income was wilful.

The **Holland** Court spoke directly to this point in noting that "the method required assumptions, among which is the equation of unexplained increases in net worth with unreported taxable income. It may be that gifts, inheritances, loans and the like account for the newly acquired wealth." 348 U.S. at 127.

The petitioner submits that the plain sense of this Court's own words must lead one to conclude that it as likely as not that an increase in one's

that an increase in one's assets may be attributable as equally to gifts, inheritances or loans as it may be attributable to taxable income. While one may be able to say that an increase in net worth may **as easily** result from taxable income as from gifts, inheritances or loans, it cannot be said with **any** assurance that such an increase is more likely than not to result from income. To state the **Holland** Court's reasoning is to refute this Court's later test in **Leary** for a valid presumption.

It must be stressed at this point that the **Holland** Court recognized that the assumption in question "raises serious legal problems in the administration of the criminal law and that the net worth method is so fraught with danger for the innocent that the courts must closely scrutinize its use" 348 U.S. at 125-126. Read against its later reasoning in **Leary**, that type of scrutiny today must compel a finding that the presumption in question is arbitrary and violative of due process.

Assuming **arguendo** the constitutional validity of the previously discussed presumption, it may not be employed where the government fails to track down reasonable leads "which, if true would establish the taxpayer's innocence." 348 U.S. at 136. Such as requirement, reasoned the Court, will

hopefully eliminate the "dilemma, especially serious in this type of case, of the accused's being forced by the risk of an adverse verdict to come forward to substantiate leads which he had previously furnished the government." 348 U.S. at 346.

It was the result of just this dilemma which ultimately caused the defendant's conviction in this case. Petitioner Robson supplied leads, they were pursued; yet neither was he advised of the results of that pursuit nor was evidence of the results of those leads presented in the government's case-in-chief. Consequently, in order to show the existence of a cash hoard, the petitioner was forced to present such evidence on his own behalf. As will be discussed further, he did just that. Yet in so doing, the petitioner made a misstatement which proved to be his undoing. Had the prosecution been forced to unveil the evidence in its case-in-chief gathered in pursuing leads given by the petitioner, the petitioner would never had been placed in the horns of this dilemma.

Sometime after the investigation of the petitioner by the Internal Revenue Service in this case began, he advised representatives of that agency of a cash hoard somewhere between

$45,000 and $75,000 that he had accumulated during the years preceding 1965. In 1970 and 1971, he supplied the government with the names and statements from three individuals* whom he claimed would corroborate the existence of the cash hoard. The Office of Regional Counsel of the IRS requested the Intelligence Division to make a field check on the leads supplied by the petitioner. Before the check could be accomplished, Regional Counsel's Office withdrew its request. The statements of witnesses Morris and Pawluc are attached as Appendix III so the court may see the solidity of the information furnished (Exh Q, R, 186).

After subsequent referral of the case to the Department of Justice, the Los Angeles United States Attorney instituted a grand jury investigation and, in 1972, subpoenaed and interrogated each of the witnesses before the grand jury.

At the pre-trial stage, the petitioner moved the trial court for production of the grand jury testimony of the three witnesses. This was denied. During the prosecution case, this motion was again made, but, while the court conducted an **in camera** inspection of the witnesses' grand jury

*Robert Morris, William Willims, and Frank Pawluc.

testimony, the motion for production was denied. None of the witnesses was called by the government in its case-in-chief. A motion for judgment of acquittal was granted as to the first count, relating to the 1965 tax year, but was denied as to counts 2 and 3, dealing with the years 1966 and 1967. The petitioner himself testified and called two of the three as witnesses in his defense. It was only after the government attempted to impeach one of the two with his grand jury testimony that the defendant, for the first time, was provided with a transcript of that witness'--and only his--grand jury testimony.

In **Holland**, this Court, stressing that "failure to investigate leads furnished by the taxpayer [in a net worth case] might result in serious injustice" required the following (348 U.S. at 135-136):

> "When the government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanations by the taxpayer inconsistent with guilt. Such refutation might fail when the Government does not track down

> relevant leads furnished by the taxpayer--leads reasonably susceptible of being checked, which, if true, would establish the taxpayer's innocence. When the Government fails to show an investigation into the validity of such leads, the trial judge may consider them as true and the Government's case insufficient to go to the jury." (footnote omitted).

It is the petitioner's contention that the failure of the government to call the three previously identified individuals as witnesses in its case-in-chief, thereby granting the defendant the right to cross-examine them with the correlative right of gaining full access to their grand jury testimony (see 18 U.S.C. § 3500) deprived him of his constitutional guarantees to the presumption of innocence, fair trial and assistance of counsel.

The full thrust of petitioner's claim requires an understanding of the following factors:

(a) A net worth tax prosecution does not shift the burden of proof. "The Government must still prove every element of the offense beyond a reasonable doubt though not to a mathematical certainty. The settled standards of the criminal law

are applicable to net worth cases just as to prosecutions for other crimes. Once the Government has established its case, the defendant remains quiet at his peril." 348 U.S. at 138-139.

(b) An "essential condition in cases of this type is the establishment, with reasonable certainty, of an opening net worth, to serve as a starting point from which to calculate future increases in the taxpayer's assets. The importance of accuracy in this figure is immediately apparent, as the correctness of the result depends entirely upon the inclusion in this sum of all assets on hand at the outset." 348 U.S. at 132.

(c) In attempting to prove with reasonable certainty the petitioner's opening net worth, the prosecution elicited testimony that petitioner had cash on hand limited to $5,000 as of each of the following dates: December 31, 1964, December 31, 1965, and December 31, 1966. (See Pl. Ex. 183; R.T. vol. IX, p. 900).

(d) Had a reasonable doubt existed at the conclusion of the prosecution's case with regard to whether a substantial cash hoard had existed on each of the three foregoing dates, the prosecution would have failed in its burden of proof. (see (b) above).

(e) Following the testimony in the defense's case of the defendant and two of the three witnesses who had been called before the grand jury the trial court found as follows:

> ". . . I believe there was a cash hoard. . Of course there was a cash hoard. Of course Mr. Robson had a lot of cash on hand; however you want to describe cash on hand. And I find, based upon the evidence, that at the beginning of 1965 he had $45,000. That was his testimony. Beginning in 1966 he had $35,000. Beginning in 1967 he had $35,000 and beginning January 1968 he had $10,000.

Consequently, the court found the petitioner not guilty as to Count 3 (1967) and guilty as to Count 2 (1966). The finding of guilty as to Count 2 was based in the finding that he did not spend any of his cash hoard in 1966 and therefore the cash hoard that existed at the beginning of 1966 could not account for the petitioner's increase in his 1966 net worth.

The Court concluded:

> ". . . Those findings of fact I make

without any doubt, any hesitation at all." [R.T. Vol. XVI, pp. 2119-2120].

The fair conclusion to be drawn from the foregoing facts is that had the evidence presented in the defendant's case been cognizable as evidence at the conclusion of the prosecution's case-in-chief, the Court would have been compelled to grant the defendant's motion for judgment of acquittal as to all three counts.

The failure of the government to present the testimony of the three witnesses in its caseinchief and allow defense counsel in cross-examination to attempt to establish a reasonable doubt as to the existence of a cash hoard* subjected the defendant to one of the many obstacles in convincing the jury of the existence of such hoards" (348 U.S. at 127) and to the risk of "lending support to the Government's case by. . . losing the jury through his apparent evasiveness." Here the defendant found the trial court, though his own testimony laid the basis for a finding that he did not spend any of the cash hoard in 1966--he failed to overcome an obstacle which became the very basis for his conviction.

*While one is left to speculate at this point, it appears that such a doubt could have been shown at this point in view of the court's later finding, after all the evidence, that not only might there have been a cash hoard, but **beyond a reasonable doubt**, such a cash hoard **did** exist.

While the prospect of compelling the prosecution to disclose the evidence of its pursuit of leads may seem novel, it must be remembered that this Court employed its supervisory powers to compel the very investigation of such leads in the **Holland** case, a novel concept at the time. Faced with the dangers inherent in a net worth prosecution the Court did not hesitate to state:

> "This Court will formulate rules of evidence and procedure to be applied in federal prosecutions where it appears necessary to maintain proper standards for the enforcement of the federal criminal law in the federal courts.' " (Citations omitted) (348 U.S. at 136, fn. 7).

A similar procedure was required by this Court in **Alderman v. United States**, 394 U.S. 165 (1969). There the defendant had demanded pre-trial disclosure of surveilance records. The Government urged that records of specified conversations be first submitted to the trial judge for **in camera** examinations after which those records found arguably relevant could be turned over to the defendant. The Court rejected that argument, holding that the records should be turned over to

the defendant without court screening. The holding was based on this Court's recognition that to follow the Government's urging would deprive the defendant of being able to detect the special significance of evidence which one less well acquainted would not be able to detect. The analogy to this case is clear. The trial court did examine **in camera** the grand jury transcripts of the testimony of the three witnesses where identity had been given by the petitioner. The court in this case was no doubt as comparably unfamiliar with nuances as the court would have been in **Alderman**. One is left with the spectre here that had the defendant been able to raise a reasonable doubt through the testimony of the three witnesses, the court would have found him not guilty, and he would not have been forced to subject himself to the obstacles envisioned in **Holland**.

Wardius v. Oregon, 412 U.S. 470 (1973) held that the due process clause of the Fourteenth Amendment precluded enforcement of a state statute requiring a defendant to give pre-trial notice to the prosecution of his alibi defense and alibi witnesses unless reciprocal discovery rights were given to the defendant. Compare **Williams v.**

Florida, 399 U.S. 78 (1970) which upheld the constitutionality of Florida's "Notice of Alibi" rule because of the reciprocity allowing the defendant discovery of the prosecution's evidence relating to alibi.

In this case full and fair statements of petitioner's "alibi" to a net worth computation showing an excess of income over that reported on his returns was given to the prosecution long in advance of trial but he was accorded no reciprocity of discovery. Instead of making an investigation of the "alibi" by the usual Internal Revenue Service personnel who normally are expected to testify at trial, this procedure was aborted; instead, investigation was made by way of Grand Jury. Is this not the "radical and dangerous departure from the historical and constitutionaly guaranteed right of a defendant in a criminal case to remain completely silent, requiring the state to prove its case without any assistance of any kind from the defendant himself" spoken of in the concuring opinion of Mr. Justice Douglas in **Wardius v. Oregon**, 412 U.S. 470, 479 and **Williams v. Florida** 399 U.S. 78 106? Has not the Petitioner been compelled to be a witness against himself without the reciprocity necessitated by due process? He has given up the

right to remain silent by furnishing evidence of leads under **Holland** doctrine, but he has been denied the due process right of reciprocal discovery, for the government's investigation of those leads was made by way of Grand Jury and, although motions were made, those Grand Jury transcripts were denied to the defendant; more, the witnesses were not called by the prosecution in its case-in-chief, thus denying the defendant the right to rebut testimony of those witnesses and to accord him the right of cross accord him the right of cross-examination and access to the transcripts under Title 18 USC § 3500.

This course of action by the prosecution cannot be squared with **Warcius v. Oregon** nor with **Stump v. Bennett** 398 F. 2d 111 (CA. 8, 1968) approved by **Johnson v. Bennett** 393 U.S 253 (1968). Just because we are considering an income tax case is no reason to excise the constitutional guarantees that every defendant in a criminal case is entitled to exercise. See **Deutch v. United States** 367 U.S. 456, 471 (1961), and **Watkins v. United States** 367 U.S. 456, 471 (1961), and **Watkins v. United States**, 354 U.S. 178, 208 (1957)

"One of the rightful boasts of Western Civilization is that the (prosecution) has the burden of

establishing guilt solely on evidence produced in Court and under circumstances assuring an accused all safeguards of a fair procedure." **Irvin v. Dowd** 366 U.S. 717, 729 (1961). This includes the presumption of the defendant's innocence. **Sinclair v. United States** 279 U.S. 263, 296-297 (1929); and **Stump v. Bennett**, 398 F. 2d 111 (CA 8, 1968).

The questions presented by this case are of great and recurring significance in the administration of criminal justice as it applies to the Internal Revenue Laws. Many hundreds of taxpayers convicted by the use of the net worth method have applied to this Court for Writs of Certiorari after their convictions were sustained by the various Courts of Appeal, which have viewed in the light most favorable to the government the judicial presumptions originated in **Holland v. United States** 348 U.S. 121 (1954), yet this court has not seen fit to review that presumption in the light of **Leary v. United States**, 395 U.S. 6 (1969), nor has it adequately defined the rules of evidence and procedure to be applied in cases where "leads" are furnished under the **Holland** doctrine. From the facts of this case it should be apparent that the principles of **Wardius v. Oregon, supra**, have been ignored and that prosecutors are taking advantage

of this situation by utilizing procedures available to them to prevent acquittal at the close of the government's case for failure to pursue leads, thereby shifting the burden of proof to a defendant who is forced to assume the risk of presenting evidence in apparent derogation of his constitutional rights.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for A Writ of Certiorari should be granted.

Dated this 29th day of November, 1974.

Respectfully submitted.

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APPENDIX
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C O P Y

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE UNITED STATES OF AMERICA, Appellee,

vs.

WALTER C. ROBSON, Appellant.

No. 74-1385

MEMORANDUM

[September 3, 1974]

On Appeal from the United States District Court
for the Central District of California

———

Before: BARNES and HUFSTEDLER, Circuit Judges, and McNICHOLS,* District Judge.

PER CURIAM:

Appellant was convicted, following a bench trial, on one of three counts of violation of 26 U.S.C. §7201 (income tax evasion).1 Findings of fact by the court were waived. The trial was protracted, the reporter's transcript contains more than two thousand pages.

The government undertook to prove tax evasion by the "net worth" method. Viewed in the light most favorable to upholding the verdict, we are of the view that a prima facie case was developed.

*Honorable Ray McNichols, District of Idaho, sitting by designation.

(1)The indictment charged tax evasion based on appellant's tax returns for the tax years 1965, 1966 and 1967. He was convicted only of the charge arising out of the 1966 return.

To account for the apparent increased net worth between the beginning and ending of the tax year, appellant sought to establish that he had a "cash hoard" of some $50,000.00 on hand at the commencement of the year which asset the government accounting witnesses failed to consider. He testified that he spent this sum during the year on the purchase of capital assets and to pay business expenses. Had such a fund existed and been so expended, most of the accumulation of net worth relied on by the prosecution to establish unreported income would have been explained. The evidence bearing on such expenditures from a cash hoard during the 1966 tax year was conflicting. The court, as trier of fact, did not believe appellant or his witnesses. This resolution of conflicting evidence is binding on us on the record here presented.

Appellant complains that the government failed to follow up leads provided by the taxpayer, which leads, it is alleged, would have led to evidence tending to prove the existence of the cash hoard. This failure, it is urged, had the effect of shifting the burden of proof onto the defendant and thusly

depriving him of due process. Contrary to appellant's position, the record reflects that the investigation officers did track down such leads furnished by the taxpayer as were reasonably susceptible to verification.

An adequate compliance with the teaching of **Holland v. United States**, 348 U.S. 121 (1954), is demonstrated.

We have considered other allegations of error and find them without merit.

Affirmed.

C O P Y

Docketed filed Oct 1, 1974 Emil E. Melfi, Jr. Clerk
U. S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA* Plaintiff-Appellee,

-vs-

WALTER C. ROBSON* Defendant-Appellant.

Case No. 74-1385

ORDER DENYING PETITION FOR REHEARING

Doc-10918F)

Before: BARNES and HUFSTEDLER, Circuit Judges, and McNICHOLS,* District Judge.

The petition for rehearing is denied.

Clerk's File No. 1-415-556-6120
Received Oct 7 1974

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*Honorable Ray McNichols, United States District Court for the District of Idaho, sitting by designation.

C O P Y

Amend. 5 CONSTITUTION

AMENDMENT V-CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amend. 6 CONSTITUTION

AMENDMENT VI-JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the

crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

§ 7201. Attempt to evade or defeat tax

Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. Aug 16, 1954, c. 736, 68A Stat. 851.

CHAPTER 29

Motion for Acquittal

Rule 29. Motion for Judgment of Acquittal.

(a) MOTION BEFORE SUBMISSION TO JURY. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment

of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) RESERVATION OF DECISION ON MOTION. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) MOTION AFTER DISCHARGE OF JURY. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed with 7 days after the jury is discharge or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a

motion that a similar motion has been made prior to the submission of the case to the jury.

NORTH AMERICAN INDUSTRIES, INC.
5025 Hampton Street • Vernon, Calif. 90058
[213] 589-6766

Mr. Clyde R. Maxwell August 30, 1970
417 South Hill Street
Los Angeles, Calif. 90013

Dear Mr. Maxwell:

You have my permission to divulge the contents of this letter to the Internal Revenue Service.

This is an account of an around the world trip we (Walt Robson) made together, in which Mr. Robson engaged in advantageous trading between ports and profitable gambling aboard ship.

We left California in early November, 1961, aboard the "Oronsay", a large English passenger ship.

Mr Robson had, at the beginning of the trip, about $8000.00 in travelers checks, and as I discovered a few days after we left, he had over $10,000.00 in cash. I remember this distinctly, because I had to nag him to deposit it with the Ships Purser, instead of hiding it in our cabin or keeping it in a money belt.

In Japan, we brought about 40 bottles of Scotch from the boat (cost below $3.00 aboard ship) and sold them for $18.00 to the bellboys at the New Japan Hotel. Mr. Robson bought at least a half dozen Cannonette Cameras and a few hundred

dollars worth of pearls-some very cheap and some expensive.

In Hong Kong, Mr. Robson purchased 200 Enicar 21 jewel calendar watches, for under $5.00 apiece. I remember these very well because the bands came separate and did not fit the watches. I spent many hours in our cabin helping him file and fit the bands to the watches. He also purchased a couple of hundred dollars worth of small transistor radios and cameras.

Our next stop was Manila. I went my own way here on a tour up a river. The next morning the cabin was full of rum. Mr. Robson told me that he had gone to a bar called "Little Joes" or "Little Tonies". They had gambling in a back room. He played 21 and won "handful of pesos". At that time the Phillippine Peso was not on the free market. The ship's purser had told us he would not redeem the Pesos. Mr. R. spent all he could on nite clubs and not wanting to deal with the black market to sell the Peso, he bought out two liquor stores of Phillippino Rum, about forty cases at $0.50 a bottle. Within two days he was sold out at 30 Shillings a bottle, about a $1,500.00 profit.

In Sydney, Australia, Mr. Robson sold out his "inventory" in three of our four day stay. He got from $20.00 to over $30.00 apiece for the watches. He told me he made about $1,000.00 on the cameras and the radios. I saw him sell these to cab

drivers, customers and owners of pubs.

One of the new passangers that boarded the boat in Sydney was an Australian man who had sold his chicken ranch and was migrating to England. From that time on, while I was making a play for the girls. Walt was playing Gin Rummy with the Australian, night after night and most of the time all night. Upon returning to the cabin after these sessions he showed his winnings which were quite large and he rarely lost. They started playing for five pounds a hand and got up to fifty. I don't know exactly, in the next few weeks, how much he won, but I know it to be in excess of $8,000.00. As a matter of fact, the Australians wife thought it was more. I had run into her in London a few months later and she had left him because of this. She had wired all his money to London from the ship to keep him from losing more to Walt, before arriving Bali, Indonesia.

At a bazar in Bali I took my shirt off because of the heat. I was immediately offered a magnificent wood carving. I went back to the ship and brought back all the shirts and white material I could get my hands on. The Australian got into the act and brought most of his clothes from the ship. We went into partners and wound up with over a hundred carvings. We gave the Purser five and he let us use a empty cabin in which to store them. Mr. Robson won the Australians share in a few hands of gin.

In Singapore, Mr. Robson purchased another

three hundred watches for about $6.00 apiece.

Our next stop was Colombo, Ceylon. Mr. Robson sold some of the watches for as much as forty and fifty dollars. One evening I saw him trade 200 watches for star sapphires. I don't know exactly how many but they filled a small leather pouch.

I might mention that customs were very lax for tourists in transit. This was not so however in Bombay where Mr. Robson after one trip across with some Scotch he gave it up.

In Aden he only bought a few cameras-I think about ten Minnoxes.

in Port Said, Egypt, he decided to disembark. He bought large leather suitcases from the Egyptians over the side of the boat, in which he shipped his share of the wood carvings to London. By the way. My half of the wood carvings along with all my luggage was stolen the night before docking in London. We were to meet again in Rome, where we were going to open a restaurent. This never materialized. I did not see Mr. Robson again until back in the States late in 1962. When he left me he had over $30,000.00 in cash and travelers checks. He mailed some of it on to American Express in London. For over two months on ship our expenses were very nominal. The ship was our hotel with free meals, 12 cents for a gin and tonic, 16 cents for a scotch and soda.

Mr Robson later told me of his travels the next

seven months after he left me in Egypt in early January 1962. He sold the carvings and star sapphires in London. He mentioned selling his cameras in Israel, buying gold U.S. coins in Beirut, and winning money in Monaco. I do not know the monetary results of these affairs.

If I can be of any further assistance or add any clarification, I will be happy to oblige.

Very truly yours,

s/Robert J. Morris
President
North American Industries

C O P Y

REPUBLIC FEDERAL SAVINGS
AND LOAN ASSOCIATION
3407 West Magnolia Boulevard
Burbank, California 91505
]213] 845-8595

Cylde R. Maxwell February 16, 1971
Attorney at Law
417 South Hill Street, Suite 601
Los Angeles, California 90013

RE: **Walter Robson**
Dear Mr. Maxwell:

You have requested further information with regard to whatever knowledge I may have concerning Walter Robson and his dealings with the Empire Savings and Loan, while I was Manager of Empire Savings during the years 1963 and 1964.

I have been shown records of Savings Account #2147 in the name of Mr. Robson, a copy of which is attached, and this has refreshed my recollection to a considerable degree.

I now remember Mr. Robson opened the account on December 17, 1963, at which time, under our policy, he was entitled to the free use of a Safety deposit box. This was box number 686.

I also recall that Mr. Robson and I proceeded to the safety deposit vault and I showed him how to

insert the key and open the box under the bank's procedure, and at that time he placed within his box five or six packages of currency. Each package was almost 3/4" thick and appeared to consist of ten units of 10 $100 bills each separated by paper clips.

From time to time thereafter during the year 1964, I was present when Mr. Robson added similar bundles of currency to his box. Occasionally he would borrow an envelope to hold the package of currency.

During the year 1964, on the occasion of these visits, when I saw the inside of the box, there were always five or six of these packages present.

I trust this is the information which you seek. You have my permission to divulge the contents of this letter to the Internal Revenue Service.

Very truly yours,

s/Frank Pawluc
Frank Pawluc

686 CLASS AA Acct. No. 2147

	Date	Withdrawals	Interest	Additions	Balance	Rec'd by	
1	Dec 17 63			10,000.00	10,000.00	E	ck ca
2	Jun 10 64	Int Dec*	20.42		10,020.42		dv ca
3	Jun 10 64	Mar 64	122.75		10,143.17		dv
4							
5	Jul -1 64	Jun64	124.25		10,267.42		dv ck
6	Jul -1 64	500.00			9,767.42	D	ck
7	Jul -1 64	500.00			9.267.42	D	ck
8	Jul -8 64	1,000.00			8,267.42	D	ck
9	Aug 18 64	2,000.00			6,267.42	L	ck
10	Aug 24 64	2,000.00			4,267.42	L	ck
	Aug 24 64	1,000.00			3,267.42	L	ck
11	Sep 30 64	Sep 64	40.03		3,307.45		dv ca
12	Sep 30 64	2,906.18			401.27	L	ca

13	Jun 24 65	Int Dec	4.91		406.18		ck
14	Jun 24 65	Int Mar	4.98		411.16		dv
15	Jun 24 65	Jun 65	5.17		416.33		dv
16	Jun 24 65			4,050.00	4,466.33	M	ck
17	Aug 23 65			533.67	5,000.00	E	ca
18							
19	Jan -8 66		11.84		5,011,84		ck
20	Jan -8 66		49.91		5,061.75		dv
21	Jan -8 66		62.39		5,124.14		dv
22	Jan -8 66			5,000.00	10,124.14	M	ck
23	May 20 66		123.30	Mar '66	10,247.44		ck
							dv

C O P Y

REPUBLIC FEDERAL SAVINGS
and loan association
3407 West Magnolia Boulevard
Burbank, California 91505
(213) 845-8595

Mr. Clyde R. Maxwell September 15, 1970
437 South Hill 6
Suite 600
Los Angeles, Calif. 90013

Dear Mr. Maxwell:

The contents of this letter can be directed to the Internal Revenue Service.

I Frank Pawluc. former manager of Empire Savings and Loan. Sunset and Doheny office, did know Walter Robson savings account holder.

To my knowledge Mr. Robson maintained 3 safe deposit boxes in which he kept large sums of money. The reason why I was aware of this, was that I on numerous occasions asked Mr. Robson to deposit these funds to his existing account. However Mr. Robson liked to have cash available.

I hope my statement will be a benefit to your client.

Very truly yours,

s/Frank Pawluc
Assistant Vice President

C O P Y

Docketed

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

UNITED STATES OF AMERICA, Plaintiff/Appellee,

vs.

WALTER C. ROBSON, Defendant/Appellant.

No. 74-1385

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Clyde R. Maxwell, Esq. counsel for the Appellant, and good cause appearing, IT IS ORDERED that the issuance, under Rule 41 (a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the Appellant herein, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before November 1, 1974.

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

s/Stanley W. Barnes
United States Circuit Judge.

A True Copy Attest Oct 18 1974
EMIL E. MELFI, JR., Clerk
By Mary Turley, Deputy
Dated: Oct. 5th 1974
Filed Oct 18 1974 U.S. Court of Appeals
Received Oct 21 1974

PROOF OF SERVICE

State of California)
ss
County of Riverside)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of 18 years and not a party to the within entitled action; my business address is 1509 N. Main, Santa Ana, California.

On November 30, 1974, I served the within PETITION FOR A WRIT OF CERTIORARI on the interested parties in said action, by placing three (3) true copies in three sealed envelopes with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed to:

Mr. William B. Saxbe
Attorney General
Attn: Appellate Section
Tax Division
Room 4320
Washington, D.C. 20530

William D. Keller
United States Attorney
U. S. Court House
312 N. Spring Street
Los Angeles, Calif. 90012

Robert H. Bork, Solicitor General
Department of Justice
Washington, D. C. 20530

I CERTIFY under penalty of perjury that the foregoing is true and correct. Executed on November 30, 1974, at Santa Ana, California.

JACK GALLAGHER

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-685

WALTER C. ROBSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of willful evasion of income tax, in violation of 26 U.S.C. 7201. He was sentenced to a term of one year's imprisonment. The court of appeals affirmed *per curiam* (Pet. App. 1-3).

The government proved its case by means of the net worth method. Contrary to petitioner's contention (Pet. 7-12), there was ample evidence to demonstrate that petitioner's correct income for 1966 was $44,528.81, and not $5,039.34 as reported on his return (Govt. Ex. 183, p. 3). In order to prove that a taxpayer's net worth increase arose from current taxable income, the government may proceed in either of two ways:

(1) by introducing into evidence a likely source of unreported income, *Holland* v. *United States*, 348 U.S. 121, 137-138; or (2) by establishing that the net worth increase did not arise from nontaxable sources, *United States* v. *Massei*, 355 U.S. 595.

Here, the government's proof proceeded on both grounds. Petitioner was the sole proprietor of a nightclub known as the Phonebooth (Tr. 245-248),[1] which was certainly a likely source of unreported income. Moreover, petitioner admitted to the Internal Revenue Service that he had received no gifts or inheritances except an apartment house, as a gift from his mother in 1962 (Tr. 990-991). However, that building was sold by petitioner before 1966 in order to provide him with the funds to buy his nightclub (Tr. 584). Although petitioner made the belated claim that he had received other substantial gifts from his parents, an examination of his parents' gift tax returns for the years 1950 through 1967 refuted the existence of such gifts other than the apartment house (Tr. 910-911; Govt. Ex. 178). Indeed, there was evidence that petitioner's father had not given him any cash gifts and was in poor financial condition when he died in 1957 (Tr. 910-912). In light of these facts adduced at trial, petitioner's claim that there was no evidence to equate his net worth increase with currently taxable income is plainly without merit.

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[1] "Tr." refers to the transcript of trial proceedings.

Petitioner further argues (Pet. 13-19) that the government should have called three witnesses whose names were supplied before trial as persons having knowledge of an alleged cash hoard. The first of these persons, William Williams, stated in writing (Defendant's Ex. S) that he had made a $10,000 gift to petitioner in 1957. But even if Williams made such a gift nine years prior to the year at issue, it was not likely to have affected the increase in petitioner's net worth in 1966. A second person, Robert J. Morris, testified that when he left petitioner in 1962, petitioner had about $30,000 in cash (Tr. 1254). However, this testimony conflicted with petitioner's admission to the Service that he returned from a trip around the world in 1962 because he was running out of money (Tr. 579-585). Finally, Frank Pawluc, a bank manager, speculated that petitioner could have had between $20,000 and $40,000 in cash in a safe deposit box in the bank. At trial however, Pawluc conceded that "really it's hard to tell" the amount of cash petitioner kept in a safe deposit box (Tr. 1304).[2] Since the testimony of these witnesses was not given credence by the government, it had no duty to call them as witnesses, and petitioner cites no authority for his novel claim that it had such an obligation. In fact, Morris and Pawluc testified for the defense, which also introduced the written statement from Williams. Petitioner thereby received whatever benefit the testimony of these witnesses provided and cannot complain that the government should have also called them to the stand.

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[2]Petitioner testified in his own behalf. In answer to questions put by the court, petitioner stated that he had $30,000 in his safe deposit box in July 1964, and the same amount in November 1966 (Tr. 1747, 1750-1751), and that he had about $5,000 in cash in his home at the beginning of 1966 and also at the end of 1966 (Tr. 1752-1753). It was therefore apparent from petitioner's own testimony that the 1966 increase in his visible assets could not have arisen from the alleged cash hoard, even assuming that it existed.

Finally, petitioner argues (Pet. 20-22) that he was denied due process of law when he was refused access to the grand jury testimony of Williams, Morris and Pawluc. They did not testify for the government, however, and petitioner was therefore not entitled to their grand jury testimony under 18 U.S.C. 3500. After studying the transcripts of the grand jury testimony of these witnesses, the trial court concluded that they contained no relevant information that was not already known to petitioner (Tr. 1126). *Wardius* v. *Oregon*, 412 U.S. 470, cited by petitioner (Pet. 20-23), does not support his claim. There, the Court reversed a conviction because the trial court refused to permit a defendant to introduce alibi evidence on the ground that he had failed to comply with a mandatory state statute requiring him to give pre-trial notice of an alibi defense, where the statute made no provision for discovery of the identity of the prosecution's rebuttal witness. Under those circumstances, which do not coincide in any relevant particular with the instant case, the Court held that the defendant did not have to reveal his alibi defense.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1975.

DOJ-1975-01

FEB 4 1975
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1974

No. 74-685

WALTER C. ROBSON, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

Petitioner's Reply To The Memorandum For The United States in Opposition

CLYDE R. MAXWELL
Attorney at Law
Suite 204
567 San Nicolas Drive
Newport Beach, California 92660
(714) 644-5232

J. GALLAGHER — PRINTED BRIEFS (714) 547-6073

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

—

No. 74-685

WALTER C. ROBSON, Petitioner

v.

UNITED STATES OF AMERICA

—

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

—

PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner requests this Honorable Court to consider the following matters with respect to the Memorandum of the United States in Opposition to Petitioner's Petition for Writ of Certiorari.

It is apparent from the Memorandum that the United States does not deny that prior to indictment "leads" to petitioner's cash on hand by way of the informal statement of three witnesses were presented to the United States and that these statements qualify as "leads" under the doctrine of **Ho and v. United States** 348 U.S. 121. The Memorandum for the United States in Opposition (page 3) goes on to state that the information submitted by the petitioner **"was not given credence by the government,"** and that therefore the prosecution was under no duty to call them as witnesses in its part of the case.

In so stating the United States concedes that it has undertaken a judicial function; that is, the determination as to the credence of the "leads" submitted, instead of submitting these leads to the court so that they might be considered by the Court on a motion at the end of the government's case for acquittal, so that the trial court could consider whether the government's evidence did rebut this strong credible evidence of a cash accumulation.

The government in its memorandum also points out that these witnesses testified for the defense but fails to note that the trial court in his decision given at the end of all the testimony did indeed believe the witnesses and stated that, based on their testimony, a cash hoard existed. It may be fairly assumed from this that, if these witnesses had testified in the government's case, the court would have held that the defendant be not guilty on such a motion especially in view of the fact that the government's evidence did not contain any specific item of unreported income from petitioner's business. (Transcript, pages 2219 and 2122).

It is respectfully submitted that accordingly judgment as to the credence of the leads furnished by the defendant was not a matter for government prosecutors, but a matter for the court to decide, and the only way to get these things before the court for its consideration on a motion at the end of the government's case was for the government to present the witnesses. In so doing, the government need not have vouched for their testimony; but nevertheless the court should have heard as their testimony as "leads" gives under the doctrine of **Holland vs. United States,** 348 U.S. 121, in order to determine the adequacy of the prosecution case.

It is exactly this point which the government misconstrues at the bottom of page 3 of its Memorandum when it states that the petitioner received whatever benefit the testimony of these witnesses provided by calling them as witnesses for the defense. After the government's case was concluded the defendant did **not** receive the benefit of having the Court consider the testimony of these witnesses on the motion to acquit at the end of the government's case, thereby denying to the defendant due process of law as clearly expounded in the Holland case, **supra,** all as contended in the Petition for Certiorari.

CLYDE R. MAXWELL
Attorney at Law

January 31, 1975.

PROOF OF SERVICE

State of California)
ss
County of Riverside)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of 18 years and not a party to the within entitled action; my business address is 1509 N. Main, Santa Ana, California.

I served the within
PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION
on the

interested parties in said action, by placing three (3) true copies in three sealed envelopes with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed to:

Mr. William B. Saxbe
Attorney General
Attn: Appellate Section
Tax Division
Room 4320
Washington, D.C. 20530

William D. Keller
United States Attorney
U. S. Court House
312 N. Spring Street
Los Angeles, Calif. 90012

Robert H. Bork, Solicitor General
Department of Justice
Washington, D. C. 20530

I CERTIFY under penalty of perjury that the foregoing is true and correct. Executed on
at Santa Ana, California.